

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PARS ICE CREAM COMPANY, INC.,
a Michigan corporation, and
PARS ICE CREAM CALIFORNIA, INC.,
a Michigan corporation,

Plaintiffs,

v.

Case No. 12-15598

CONOPCO, INC., d/b/a UNILEVER,

Defendant/Counter-Plaintiff,

HON. AVERN COHN

v.

DAVOUD SADEGHI, SHELLEY
TRAYWICK, PARS ICE CREAM
COMPANY, INC., and PARS ICE
CREAM CALIFORNIA, INC.,

Counter-Defendants.

/

**ORDER DENYING IN PART AND GRANTING IN PART UNILEVER'S MOTION FOR
ADDITIONAL FACTUAL FINDINGS (Doc. 218)**

I. INTRODUCTION

This is a post-judgment motion by Defendant Conopco, Inc., d/b/a Unilever (Unilever) for the Court to make additional findings, (Doc. 218). This case is a commercial dispute between Unilever—an ice cream manufacturer—and a distributor—Plaintiffs Pars Ice Cream Company, Inc. and Pars Ice Cream California, Inc. (Pars).

Unilever rented freezers to Pars for displaying ice cream. The parties' distribution agreements ended December 31, 2012. At termination, Pars was obliged to

return the rented freezers to Unilever, but did not. The Court appointed a special master to inventory and valuate the unreturned freezers. In adopting the special master's recommendation, the Court ordered as follows:

Unilever shall be responsible for collecting its freezers from where they are located. Pars shall bear the costs associated with collecting the freezers, including, as necessary, paying retailers for the product in the freezers and moving the freezers to a location designated by Unilever

....

(Doc. 162 at 2).

The case was tried over the course of a 13-day bench trial, after which the Court issued a decision awarding Unilever \$2.4 million in damages. The award included \$715,336 for unpaid product invoices, \$1,282,373 for unauthorized sales deductions and freezer-rent deductions by Pars, and \$467,070 for an unpaid prior judgment.

In addition to freezer-rent deductions, the Court noted there was a dispute about unpaid freezer rent owed by Pars to Unilever. The parties remained in contention over freezer returns despite the Court's adoption of the special master's report. The Court bifurcated the freezer-rent and -return issues for later proceedings.

II. MOTION

Unilever asks the Court to find that it is owed \$338,066 in unpaid freezer rent from 2013-2015, along with \$61,372 in corresponding pre-judgment interest. Unilever seeks both \$393,483 for the fair value of the unreturned freezers and \$382,243 for "logistics" costs to retrieve them from multiple locations—totaling \$775,726. These figures correlate to a prior summary table of Unilever's freezer costs, (Doc. 197-5 at 2-5). Pars responds that Unilever's freezer-return request reflects an inappropriate measure of damages, noting logistics costs are equal to the cost of the inventory itself.

III. DISPOSITION

A. Freezer Rent

As reflected in the Court's prior findings, the parties' relationship was terminated on December 31, 2012. Post-termination, there is no basis for the payment of freezer rent or interest. Unilever's motion for additional findings is DENIED IN PART as to freezer rent and pre-judgment interest.

B. Freezer Returns

Unilever is contractually entitled to the return of its freezers. As reflected in the Court's adoption of the special master's report, Pars is responsible for paying Unilever's costs to retrieve the unreturned freezers.

Under the circumstances, the Court considers the unreturned freezers to be abandoned. Unilever is owed the value of its freezers.

Unilever's motion for additional findings is GRANTED IN PART to this end. The judgment of July 14, 2016 will be amended *nunc pro tunc* to include \$393,483 in damages to compensate Unilever for the lost value of its unreturned freezers.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: November 14, 2016
Detroit, Michigan